

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 CECIL DUDGEON,

10
11 Petitioner,

12 v.

13 HENRY RICHARDS,

14 Respondent.

No. C09-5229 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
HABEAS PETITION AS UNTIMELY

15 This matter comes before the Court on the Report and Recommendation of the Magistrate
16 Judge that Petitioner's request for habeas corpus relief be denied and the petition be dismissed
17 with prejudice. The Petitioner has filed objections to the Report and Recommendation
18 contending that the Magistrate Judge's determination that Petitioner's petition is untimely is
19 erroneous.
20

21 As detailed by the Magistrate Judge, the statute of limitations for filing the federal habeas
22 petition had expired prior to Mr. Dugeon's filing of a collateral proceeding in state court.
23 Accordingly, the collateral proceeding does not toll the one-year statute of limitations. See 28
24 U.S.C. § 2244(d). The Magistrate Judge also detailed the inapplicability of provisions of 28
25 U.S.C. § 2244(d)(1)(D) to Petitioner's claim. Nor is Petitioner entitled to receive credit for the
26

1 time of his civil commitment as a sexually violent predator against his term of community
2 supervision.

3 Petitioner does not meet the criteria for tolling based on pending collateral proceedings or
4 the extraordinary circumstances required for equitable tolling. There are no circumstances
5 preventing Petitioner from filing his habeas petition in a timely manner.
6

7 The Court, having reviewed the petition for writ of habeas corpus, the response, the Report
8 and Recommendation of Magistrate Judge Karen L. Strombom, objections to the Report and
9 Recommendation, and the remaining record, does hereby find and ORDER:

- 10 (1) The Court adopts the Report and Recommendation;
- 11 (2) Petitioner's writ of habeas corpus [Dkt. 3] is **DENIED** and this action is
12 **DISMISSED WITH PREJUDICE**; and
- 13 (3) The Clerk is directed to send copies of this Order to Petitioner, counsel for
14 Respondent and to the Hon. Karen L. Strombom.

15 DATED this 22nd day of September, 2009.

16
17
18 

19 FRANKLIN D. BURGESS
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26